IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4375 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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VS RAVAL - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/06/2007

ORAL JUDGMENT

1. By way of this petition, under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction

quashing and setting aside the order of dismissal as confirmed by the Reviewing Authority and has further prayed to reinstate the petitioner in service.

2. The facts leading to the present Special Civil Application in nutshell are as under:

That the petitioner was serving as Social Welfare Officer and at the relevant time i.e. on 01.07.1986 he was transferred to Bhavnagar and passed an order with regard to some payment towards tuition fees, scholarship etc. and for that charge-sheet dated 05.05.1988 was issued to the petitioner for holding Departmental Inquiry in respect of three charges. The Inquiry Officer submitted his report and held that charge Nos. 1 and 2 are proved in part, however, he has held charge no.3 as not proved. The Disciplinary Authority did not agree with the findings of the Inquiry Officer with regard to charge Nos. 1 and 2 by which the Inquiry Officer has held Charge Nos. 1 and 2 partly proved. Therefore, by show cause notice dated 24.07.1992, the petitioner was directed to show cause and make his submission. It appears from the record that the petitioner submitted his explanation / representation on 12th August, 1992

and considering the same impugned order came to be passed by the Secretary, Social Welfare and Tribal Development Department dated 29th September, 1992 dismissing the petitioner from the service. Being aggrieved and dissatisfied with the same, the petitioner approached the Reviewing Authority and the Reviewing Authority also confirmed the said order. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri Supehia, learned Advocate appearing on behalf of the applicant has vehemently submitted that after the Disciplinary Authority disagreed with the findings of the Inquiry Officer and the show cause notice was issued and when the petitioner has replied to the same and made representation, before passing passing the impugned order of dismissal a specific finding ought to have been given by the Disciplinary Authority considering the representation submitted by the petitioner and the Disciplinary Authority ought to have given specific finding by giving cogent reasons disagreeing with the findings of the Inquiry Officer and holding the petitioner guilty. Shri

Supehia, learned Advocate appearing on behalf of the petitioner has relied upon the decision of the Hon'ble Supreme Court in the case of ***Ranjit Singh v/s. Union of India & Ors.*** reported in ***2006 AIR SCW 2177.*** It is submitted that even in a case where the Disciplinary Authority proposing to disagree with the findings of Inquiry Officer issuing show cause notice to delinquent and there was no reply filed by the delinquent to the show cause notice, in that case, the Hon'ble Supreme Court has held that it was obligatory on the part of Disciplinary Authority to analyze materials on record afresh and has to give specific reasons and specific findings and the Disciplinary Authority cannot merely rely on reasons disclosed by him in his show cause notice. Therefore, it is requested to allow the present Special Civil Application.

4. Shri Dipen Desai, learned Assistant Government Pleader is not in a position to satisfy this Court whether any specific finding is given by the Disciplinary Authority holding the petitioner guilty for charge Nos. 1 and 2 and/or any reasons assigned by the Disciplinary Authority holding charge

Nos. 1 and 2 proved against the petitioner. However, replying upon paragraph No.24 of the aforesaid judgment of the Hon'ble Supreme Court, he has submitted if this Court is to remand the matter to the Disciplinary Authority by holding that the impugned order passed by the Disciplinary Authority is not sustainable as no reasons have been assigned and as there is no specific finding holding charge Nos. 1 and 2 proved against the petitioner, in that case, the petitioner may not be reinstated in service and he shall be deemed to be under suspension till an appropriate order is passed by the Disciplinary Authority on remand.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. It is not in dispute that the Departmental Inquiry was initiated against the petitioner for three charges and Inquiry Officer after conclusion of inquiry held charge Nos. 1 and 2 proved in part and exonerated the petitioner so far as charge No.3 is concerned. That the Disciplinary Authority disagreed with the findings of the Inquiry Officer for not holding Charge Nos. 1 and 2 proved against the

petitioner fully. Therefore, issued show cause notice and the petitioner replied to the said show cause notice and submitted the representation. Thereafter, the Disciplinary Authority has passed the impugned order and on going through the impugned order, it appears that no reasons have been assigned by the Disciplinary Authority holding charge Nos. 1 and 2 proved against the petitioner and that no finding have been given by the Disciplinary Authority not agreeing with the findings of the Inquiry Officer holding charge Nos. 1 and 2 proved against the petitioner. In the case of ***Ranjit Singh*** *(supra)*, the Supreme Court considering other judgments of the Hon'ble Supreme Court has held that when the Disciplinary Authority proposes to disagree with findings of Inquiry Officer, show cause notice is required to be issued to the delinquent; it is obligatory on the part of the Disciplinary Authority to analyse materials on record afresh and the Disciplinary Authority cannot merely rely on reasons disclosed by him in his show cause notice as they are only tentative in nature. It is required to be noted that even before the Hon'ble Supreme Court in the said case there was no reply to the show cause notice filed by the delinquent when the show cause notice

was issued by the Disciplinary Authority proposing to disagree with the findings of the Inquiry Officer and inspite of that the Hon'ble Supreme Court has held that it was obligatory on the part of the Disciplinary Authority to analyse the materials on record afresh and has to give specific findings *qua* each charge and assign reasons.

7. Considering the decision of the Hon'ble Supreme Court in the case of *Ranjit Singh (supra),* the impugned order passed by the Disciplinary Authority dated 29th September, 1992 cannot be sustained as no reasons have been assigned by the Disciplinary Authority disagreeing with the findings of the Inquiry Officer and holding charge Nos. 1 and 2 proved against the petitioner. Under the circumstances, the impugned order dated 29th September, 1992 dismissing the petitioner from the service and confirmed by the Reviewing Authority is hereby quashed and set aside. The matter is remanded to the Disciplinary Authority with a direction to consider the matter afresh and to consider the representation submitted by the petitioner and to give specific findings and assign reasons. The aforesaid exercise is to be completed within a period

of 6(six) months from the date of receipt of this order. However, it is made clear that although the order of Disciplinary Authority dated 29th September, 1992 is quashed and set aside, it is directed that the petitioner shall be deemed to be under suspension till an appropriate order is passed by the Disciplinary Authority. The question of payment of backwages, it is directed that the same would depend upon the ultimate order that may be passed by the Disciplinary Authority. It is also made clear that this Court has not expressed any opinion on merits in favour of either parties. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

[M.R.Shah, J.]

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